

(d) Except as provided in §1690.307, in no instance shall there be formal submission to the EEOC or the affected agencies without prior consultation pursuant to section 1-304 of the Order.

(e) Where an agency issuance is related to the internal management or administration of the agency, the issuance is exempt from the consultation process under the Order. The initiating agencies will make the determination of what must be submitted. When the agencies are in doubt, EEOC will determine the extent to which a particular issuance is covered by this exemption.

[45 FR 68361, Oct. 14, 1980, as amended at 47 FR 46276, Oct. 18, 1982]

**§ 1690.302 Issuances proposed by EEOC.**

Whenever the EEOC proposes to develop a significant issuance or any issuance requiring consultation, the procedure outlined in these regulations, shall also apply, as set forth in section 1-303 of the Order. The EEOC shall advise and consult with other affected agencies whenever it develops an issuance, in the same manner and to the same extent as other agencies are required to do in §1690.301 of this part, and in other sections below.

**§ 1690.303 Consultation with affected agencies.**

At the start of consultation, the EEOC shall determine which other agencies would be affected by the proposed issuance, and the initiating agency shall consult with such agencies. Initiating agencies shall also consult with other agencies which claim that their internal equal employment opportunity or personnel programs are affected by proposed issuances otherwise directed at external equal employment opportunity efforts. Agencies may consult with any other agencies that they believe would be affected by the issuance. The consultation period shall be determined by the parties. During the consultation period, the EEOC shall seek to resolve any disputes with the initiating agency before publication.

**§ 1690.304 Coordination of proposed issuance.**

(a) *Procedure for publication of proposed issuance.* (1) If the initiating agency, after consultation with EEOC, proposes to publish the issuance for purposes of receiving comments from the public, it shall confer with EEOC and agree on a mutually agreeable length of time, no less than 15 working days, during which the proposal shall be submitted to all affected Federal agencies pursuant to section 1-304 of the Order. The period of review shall be sufficient to allow all affected agencies reasonable time in which to properly review the proposal.

(2) When an affected agency wishes an extension of the review period, it shall make such request of the initiating agency. If the initiating agency does not grant the request, the affected agency may then make that request of EEOC. EEOC may, at its discretion, grant the additional time requested, whereupon EEOC will inform the initiating agency which shall extend the review period. EEOC shall also inform the initiating agency of the reasons for the extension.

(3) After 15 working days, if the EEOC has not requested an extension of time or otherwise communicated the need for more time to review the proposal, the initiating agency may proceed to publication of the proposed significant issuance for public comment for at least 60 days.

(4) During this public comment period, certain issues may be submitted to employer and employee representatives for comment pursuant to section 2(c) of Executive Order 12044 (Improving Government Regulations) which requires that agencies give the public an early and meaningful opportunity to participate in the development of significant regulations.

(b) *Procedure for publication of final issuance.* After the period for public comment has closed, the initiating agency shall then incorporate the changes it deems appropriate and forward to EEOC for review, a copy of the document as published, a copy of the document as amended, with changes highlighted, any staff analysis, and a list of commentators. EEOC or affected

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agencies may review and copy the comments received. The time needed to review these materials shall be agreed on by the EEOC and the initiating agency. After completion of this review, the initiating agency shall formally submit the proposed final issuance to all affected agencies for at least 15 working days prior to publication.

### § 1690.305 Nondisclosure of proposed issuances.

(a) In the interest of encouraging full interagency discussion of these matters and expediting the coordination process, the EEOC will not discuss the proposed issuances of other agencies at an open Commission meeting where disclosure of information would be likely to significantly frustrate implementation of a proposed agency action. The Commission will make this determination on a case by case basis.

(b) Requests by the public for drafts of proposed issuances of another agency will be coordinated, in appropriate circumstances, with that agency and the person submitting the request shall be so notified. The decision made by that agency with respect to such proposed issuances will be honored by the Commission.

[45 FR 68361, Oct. 14, 1980, as amended at 45 FR 71799, Oct. 30, 1980]

### § 1690.306 Formal submission in absence of consultation.

If an initiating agency has an issuance which was already under development on or before July 1, 1978, when Executive Order 12067 became effective, and on which there has been no consultation, the agency shall immediately notify the EEOC of the existence of such proposals and the following procedure shall apply:

(a) EEOC shall confer with the initiating agency and shall determine whether the proposal should be the subject of informal consultation and/or formal submission to other affected Federal agencies pursuant to section 1-304 of the Order. This does not preclude the right of the agency to consult with any other agency it wishes.

(b) If the EEOC decides that informal consultation and/or formal submission is necessary, it shall confer with the proposing agency and agree on a mutu-

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ally acceptable length of time for one or both (the informal consultation and/or formal submission).

(c) The period of formal submission shall be sufficient to allow all affected agencies time in which to properly review the proposal. While such period may be longer, in no instance may it be shorter than 15 working days.

### § 1690.307 Temporary waivers.

(a) In the event that the proposed issuance is of great length or complexity, the EEOC may, at its discretion, grant a temporary waiver of the requirements contained in § 1690.303 or § 1690.304. Such waivers may be granted if:

(1) The period of consultation and thorough review required for these documents would be so long as to disrupt normal agency operations; or

(2) The initiating agency is issuing a document to meet an immediate statutory deadline; or

(3) The initiating agency presents other compelling reasons why interim issuance is essential.

(b) In the event of a waiver, the initiating agency shall clearly indicate that the issuance is interim, has been published pursuant to a waiver, and is subject to review. EEOC reserves the right, after publication, to review the document in light of the objectives of the Order. The initiating agency may make substantive conforming changes in light of comments by EEOC and other affected agencies.

[45 FR 68361, Oct. 14, 1980, as amended at 45 FR 71799, Oct. 30, 1980]

### § 1690.308 Notice of unresolved disputes.

(a) The disputes resolution mechanism in section 1-307 of the Executive Order should be used only in extraordinary circumstances, and only when further good faith efforts on the part of the EEOC and the agency involved would be ineffective in achieving a resolution of the dispute. Before using the disputes resolution mechanism, the EEOC or the initiating agency must have fully participated in the coordination process, including giving notification to the EEOC and the affected agencies of its intention to publish in final within 15 working days.